IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 24513 of 2004

Between:

Sri M. Madhava Reddy, S/o M.Narayana Reddy,
O/o Dy. Executive Engineer, Sangareddy, Medak District.

..... PETITIONER

AND

1 The Vice Chairman and Managing Director, APSRTC, RTC Cross Roads, Musherabad Hyderabad.
2 The Chief Civil Enginer-II, APSRTC, Musherabad Hyderabad.
3 The Executive Engineer, APSRTC, Hyderabad Rural, Mahatmagandhi Bus Station, Hyderabad.
4 Sri Ravi Babu
APSRTC, Hyderabad Rural, Mahatmagandhi Bus Station, Hyderabad.
5 Sri Urukadar,
APSRTC, Hyderabad Rural, Musheerabad, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or a Writ more particularly in the nature of Writ of mandamus by declaring the action of the R-3 and R-2 in transferring the petitioner vide order No. EE HR/813 (2) 2002-CED, dt. 4-11-2004 (Sl.No. 3) by R-3 which is confirmed by the order No. PA/660(4)/2004-CCE.II, dt. 18-12-2004 as arbitrary, discriminatory without application of mind, malice in Law, illegal being violation of the Article 14, 16 and 21 of the Constitution of India and set aside the same in respect of the petitioner alone and consequently direct the Respondents to retain the petitioner at Sangareddy.

Counsel for the Petitioner: MR.KRISHNA DEVAN

Counsel for the Respondent Nos.1 to 3: MR.V.T.M.PRASAD (S.C.FOR APSRTC)

Counsel for the Respondent Nos.4 and 5: None appeared.

The Court made the following :

ORAL ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the 2nd and 3rd respondents in transferring the petitioner from Sangareddy to Nalgonda vide order No.EE HR/813(2) 2002-CED, dated 4.11.2004 (Sl.No.3) which was confirmed by an order No.PA/660(4)/2004-CCE.II, dated 18.12.2004.

The respondents have not filed any counter affidavit.

The learned counsel for the petitioner has contended that the petitioner may be continued till the end of the academic year in view of the decision reported in the case of ***DIRECTOR OF SCHOOL EDUCATION, MADRAS AND OTHERS Vs. O.KARUPPA THEVAN AND ANOTHER*** wherein it is held to the following effect:

> *"The tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic*

year. The appeal is allowed accordingly with no order as to costs."

Based on the above decision, the learned counsel has vehemently contended that the petitioner cannot be transferred in the middle of the academic year and he has to continue at Sangareddy till the end of the academic year. The learned counsel has further contended that the respondents did not consider the representation of the petitioner in the light of the directions given by this Court. Therefore, it amounts to legal malice.

There cannot be any dispute that the law laid down by the Supreme Court is binding on all Courts under Article 141 of the Constitution of India. Considering the facts and circumstances of the case, their Lordships directed the respondents therein not to effect the transfer till the end of the academic year. Therefore, the above decision has no application to the facts of the present case. A direction is given by this Court to consider the case of the petitioner in W.P.No.22167 of 2004. In pursuance of that direction, the impugned order, dated 8.12.2004 is passed by the 2nd respondent stating that on administrative need of the Corporation only, the petitioner has been transferred from Sangareddy to Nalgonda and the distance between these stations is less than 100 kilo metres. The transfer of the petitioner is not only an incident of service but also one of the service conditions. This Court, while exercising its jurisdiction under Article 226 of Constitution of India, cannot interfere with the transfer order unless it is vitiated by malice on the part of the transferring authority or issued by way of punishment or contrary to the Rules governing the service conditions of the transferee. There is no factual foundation on any one of the aforesaid grounds. Therefore, the impugned order does not suffer from any incurable legal infirmities so as to call for interference by this Court and the writ petition is devoid of merit.

The writ petition is accordingly dismissed. In the circumstances of the

case, there shall be no order as to costs.

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(K.C. BHANU, J.)

11th February, 2005.

bcj

To

1 The Vice Chairman and Managing Director, APSRTC, RTC Cross Roads, Musherabad Hyderabad.
2 The Chief Civil Enginer-II, APSRTC, Musherabad Hyderabad.
3 The Executive Engineer, APSRTC, Hyderabad Rural, Mahatmagandhi Bus Station, Hyderabad.
4 Two C.D. copies.

Note: Furnish C.C. by Monday

B/o.

bcj